

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	Civil No.: IP97 - 854 C-T/6
)	
v.)	
)	
MARTIN MARIETTA MATERIALS, INC.;)	Filed:
CSR LIMITED;)	
CSR AMERICA, INC.; and)	Entered: August 29, 1997
AMERICAN AGGREGATES CORPORATION,)	
)	
Defendants.)	
)	

WHEREAS, plaintiff, the United States of America, having filed its Complaint herein on May 27, 1997, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the production and sale of aggregate in Marion County, Indiana;

AND WHEREAS, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

DEFINITIONS

As used in this Final Judgment:

A. "Martin" means defendant Martin Marietta Materials, Inc., a North Carolina corporation headquartered in Raleigh, North Carolina, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. "American Aggregates" means defendant American Aggregates Corporation, a Delaware corporation headquartered in Dayton, Ohio, and includes its successors and assigns,

and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. "CSR America" means defendant CSR America, Inc., a Georgia corporation headquartered in Atlanta, Georgia (of which American Aggregates is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

D. "CSR" means defendant CSR Limited, a company formed under the laws of Australia and headquartered in Sydney, New South Wales (of which CSR America is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at a quarry.

F. "Asphalt concrete" means material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

G. "Ready mix concrete" means a material used in the construction of buildings, highways, bridges, tunnels, and other products and is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind.

H. "Marion County" refers to Marion County, Indiana. Indianapolis, Indiana is located in Marion County.

I. Unless otherwise agreed to by the Department of Justice, in its sole discretion, "Assets to be Divested" means:

(1) all rights, titles, and interests, including all fee and all leasehold and renewal rights, in American Aggregates' Harding Street, Indianapolis, Indiana quarry located at 4200 South Harding Street, Indianapolis, Indiana 46217, and the related maintenance facilities and administration buildings (the "Harding Street Quarry") including, but not limited to, all real property, capital equipment, fixtures, inventories, trucks and other vehicles, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvement related to the production, distribution, and sale of aggregate and stone products at the Harding Street Quarry; and

(2) all intangible assets, including customer lists, contracts to supply third parties aggregate and stone products, and contracts permitting third parties to operate hot-mix plants and concrete plants at the Harding Street Quarry, associated with the Harding Street Quarry.

III.

APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all Assets to be Divested, that the purchaser agree to be bound by the provisions of this Final Judgment.

IV.

DIVESTITURE

A. Martin is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of this Final Judgment, or five (5) days after its entry by the Court, whichever is later, to divest the Assets to be Divested to a purchaser acceptable to the plaintiff, in its sole discretion.

B. Martin shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States in its sole determination may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, Martin promptly shall make known, by usual and customary means, the availability of the Assets to be Divested described in this Final Judgment. Martin shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Martin shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Assets to be Divested customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Martin shall make available such information to the plaintiff at the same time that such information is made available to any other person.

D. Martin shall not interfere with any negotiations by any purchaser to employ any Martin (or former CSR, CSR America, or American Aggregates) employee who works at, or whose principal responsibility is the manufacture, sale or marketing of aggregate or stone products produced by the Assets to be Divested.

E. Martin shall permit prospective purchasers of the Assets to be Divested to have access to personnel and to make such inspection of the Assets to be Divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Martin shall warrant to the purchaser of the Assets to be Divested that the Assets to be Divested will be operational on the date of sale.

G. Martin shall not take any action, direct or indirect (not including otherwise lawful competitive price action, expansion of capacity or similar competitive conduct), that will impede in any way the operation of the Harding Street Quarry.

H. Martin shall warrant to the purchaser of the Assets to be Divested that there are no known defects in the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested and that Martin will not undertake, directly or indirectly, following the divestiture of the Assets to be Divested any challenges to the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the Assets to be Divested and be accomplished by selling or otherwise conveying the Assets to

be Divested to a purchaser in such a way as to satisfy plaintiff, in its sole discretion, that the Assets to be Divested can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture and sale of aggregate, and stone products. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the plaintiff's sole satisfaction: (1) has the capability and intent of competing effectively in the production and sale of aggregate and stone products in Marion County; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the manufacture and sale of aggregate and stone products in Marion County; and (3) none of the terms of any agreement between the purchaser and Martin give Martin the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in Marion County.

V.

APPOINTMENT OF TRUSTEE

A. In the event that Martin has not divested the Assets to be Divested within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Assets to be Divested.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Assets to be Divested described in Section II, I. of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and

VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Sections V(C) and VIII of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Martin any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the plaintiff, and shall have such other powers as this Court shall deem appropriate. Martin shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Martin must be conveyed in writing to the plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Martin, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Martin and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Assets to be Divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Martin shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best effort to effect all necessary regulatory approvals. The trustee and any

consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of Martin, and Martin shall develop financial or other information relevant to the Assets to be Divested as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Martin shall permit prospective acquirers of the assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceeding month, made an offer to acquire, expresses an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Assets to be Divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems

confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI.

NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Martin or the trustee, whichever is then responsible for effecting the divestiture, shall notify the plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify Martin. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets to be Divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the plaintiff of such notice, the plaintiff may request from Martin, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Martin and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the

plaintiff has been provided the additional information requested from Martin, the proposed purchaser, and any third party, whichever is later, the plaintiff shall provide written notice to Martin and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the plaintiff provides written notice to Martin and the trustee that it does not object, then the divestiture may be consummated, subject only to Martin's limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that the plaintiff does not object to the proposed purchaser or upon objection by the plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by the plaintiff, or by Martin under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII.

AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Martin shall deliver to the plaintiff an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Martin has taken to solicit a buyer for the relevant assets.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Martin shall deliver to the plaintiff an affidavit which describes in detail all actions Martin has taken and all steps Martin has implemented on an on-going basis to preserve the Assets to be Divested pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Martin's efforts to maintain and operate the Assets to be Divested as an active competitor, maintain the management, sales, marketing and pricing of the Assets to be Divested, and maintain the Assets to be Divested in operable condition at current capacity configurations. Martin shall deliver to the plaintiff an affidavit describing any changes to the efforts and actions outlined in Martin's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Martin shall preserve all records of all efforts made to preserve and divest the Assets to be Divested.

VIII.

HOLD SEPARATE ORDER

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Assets to be Divested.

IX.

FINANCING

Martin is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of the plaintiff.

X.

COMPLIANCE INSPECTION

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Martin made to its principal offices, shall be permitted:

- (1) Access during office hours of Martin to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Martin, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and
- (2) Subject to the reasonable convenience of Martin and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Martin's principal offices, Martin shall submit such written reports, under oath if requested, with respect any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Martin to the plaintiff, Martin represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Martin marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the plaintiff to Martin prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Martin is not a party.

XI.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the

modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII.

TERMINATION

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: 8/29/97

_____/s/_____
United States District Judge